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The opinion in support of the decision being entered today is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte RICHARD J. MORRIS and SCOTT CHARLES VANWEY

Appeal No. 2007-2636
Application No. 10/826,651
Technology Center 3700

Decided: January 22, 2008

Before TERRY J. OWENS, HUBERT C. LORIN, and JENNIFER D. BAHR,
Administrative Patent Judges.

OWENS, *Administrative Patent Judge.*

DECISION ON APPEAL

The Appellants appeal from a rejection of claims 1-37, which are all of the pending claims.

THE INVENTION

The Appellants claim a vent, methods for constructing and installing the vent, and a method for venting a structure. Claims 1 and 16 are illustrative:

1. A vent for conveying air between a structure interior and the environment, comprising:

 a top panel having an interior surface and a multiplicity of discrete top panel air passages providing for fluid communication between the structure interior and the environment;

 at least one vent part with a bottom surface and in a contacting relation with the interior surface of the top panel, the at least one vent part defining a plurality of discrete vent part air passages providing for fluid communication between the structure interior and the environment; and

 a filter material secured to the bottom surface of the at least one vent part and to the top panel.

16. A method of constructing a vent, comprising:
 contacting a vent part to a top panel, each of the top panel and the vent part comprising a weatherproof material defining a multiplicity of discrete air passages;
 and

 securing an air permeable filter material to an interior surface of the top panel and to the vent part.

THE REFERENCES

Morris	WO 99/35446	Jul. 15, 1999
Coulton	US 6,298,613 B1	Oct. 9, 2001

THE REJECTION

Claims 1-37 stand rejected under 35 U.S.C. § 103 as being unpatentable over Morris in view of Coulton.

OPINION

We affirm the Examiner's rejection.

The Appellants limit their arguments to the independent claims, i.e., claims 1, 13-16 and 26 (Br. 9-13; Reply Br. 2-11). We therefore address only those claims. The dependent claims stand or fall with the independent claim from which they depend. *See* 37 C.F.R. § 41.37(c)(1)(vii)(2007).

Morris discloses a roof ventilator (44) comprising a weatherproof top panel (110) having a multiplicity of air passages (144) extending between its lateral edges (132, 136), transversely to its longitudinal axis (p. 9, l. 31 – p. 10, l. 12; p. 11, ll. 3-4; fig. 1). Below the top panel are weatherproof lateral vents (112) having a gap (196) therebetween and including at least three vent panels (160-162) with air passages (133) like those in the top panel (p. 10, ll. 17-32; p. 11, ll. 3-4; figs. 1, 3).

Coulton discloses a roof ridge vent (30) comprising a mat (32) that is divided into a pair of identical longitudinally-extending flaps (36, 38) and has a substantially planar upper surface (40), a substantially planar roof confronting surface (42) and, therebetween, a plurality of hollow spacer cusps (44) (col. 4, ll. 38-46; fig. 2). Between the flaps is a longitudinally-extending slot (22) for venting air between the underlying attic and the ambient atmosphere (col. 4, ll. 5-8). Secured to the roof confronting surface is a strip of air permeable filter material (50) that extends along the length of the mat and extends laterally between the mat's edge flanges (52, 54) (col. 4, ll. 57 – 66). The filter material permits air flow outwardly from the attic through the vent's opening (56) while preventing insects, rain, snow, blowing foreign objects, and the like from entering the vent's opening (col. 4, ll. 58-62; col. 4, l. 66 – col. 5, l. 3). The filter material also covers the slot between the mat's flaps to prevent insects or like foreign objects from entering the vent from the attic (col. 5, ll. 3-6).

The Appellants' arguments are directed toward the following claim limitations: "a filter material secured to the bottom surface of the at least one vent part and to the top panel" (claim 1), "an air permeable filter attached to the bottom surface of the top panel and positioned to filter air being conveyed through the top panel air passages or the vent air part air passages" (claim 13), "a filtering material extending between the top panel and the bottom surface of one of the vent parts" (claim 14), "allowing air exchange between the structure interior and the environment via the top panel air passages, the vent part air passages, and the filter material" (claim 15), "securing an air permeable filter material to an interior surface of the top panel and to the vent part" (claim 16), and "the filter material secured to the bottom surface of the vent part and to the top panel" (claim 26) (Br. 9).

The Appellants argue that Coulton's reinforcement material 62 to which the filter material is illustrated as being attached (fig. 2) does not have air passages (Reply Br. 3-7). Coulton does not require that the filter material is attached to the reinforcement material. Coulton teaches that "[s]ince the edge flanges **52, 54** are substantially co-planar with the upper surface **40** of the mat **32**, weather and insects are blocked [by the filter material] from entering into the vent adjacent the vent opening **56** formed between the roof **10** and the cap shingles **18**" (col. 4, l. 66 – col. 5, l. 3). That teaching would have led one of ordinary skill in the art, through no more than ordinary creativity, to secure Coulton's filter material between Morris's top panel and the bottom of the vent panels to prevent weather and insects from entering the vent from the outside. See *KSR Int'l. Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1741 (2007) (In making the obviousness determination one "can take account of the inferences and creative steps that a person of ordinary skill in the art would employ."). Likewise, Coulton's teaching that covering slot 22 with the filter

material prevents insects and the like from entering the vent from the attic (col. 5, ll. 3-6) would have led one of ordinary skill in the art, through no more than ordinary creativity, to cover with Coulton's filter material the opening between the attic and Morris's lateral vents (112, fig. 15).

In the Examiner's Answer the Examiner argues, in reliance upon Coulton's column 4, line 57 to column 5, line 11, that it would have been obvious to one of ordinary skill in the art to add Coulton's filter material to Morris's vent to prevent rain, snow and insects from entering the vent and thereby clogging the air passage (Ans. 7). In response the Appellants argue that "[i]f this cited passage from Coulton arguendo provided the required motivation, it was not cited in the rejection. It is the rejection which must support a prima facie case, not further arguments from the Examiner's Answer" (Reply Br. 7-8). The rejection is over the combined teachings of the references, not the Examiner's reasoning in the Final Rejection. The portion of Coulton cited by the Examiner has been available for the Appellants' consideration from the Examiner's first rejection over Morris in view of Coulton. In the Examiner's Answer the Examiner brought the cited portion of Coulton to the Appellants' attention. To convince us of reversible error in the rejection the Appellants must explain why the applied references, including the portion of Coulton cited by the Examiner, would have failed to render obvious, to one of ordinary skill in the art, the addition of Coulton's filter material to Morris's vent in the manner proposed by the Examiner. The Appellants have not done so.

The Appellants argue that in view of Morris's disclosure that "the air deflector [472, figs. 18, 19] diverts ambient air flow and thereby inhibits ingress of precipitation into air passages proximate the second planar portion of the air deflector" (p. 4, ll. 15-17), one of ordinary skill in the art would not have considered Coulton's filter material to be needed to inhibit ingress of moisture and

wind (Reply Br. 10). One of ordinary skill in the art would have been led by Coulton to add Coulton's filter material to Morris's vent to 1) provide further resistance to precipitation and to prevent insects and blowing foreign objects, which are not disclosed by Morris as being inhibited by the air deflector, from entering the vent from the outside, and 2) prevent insects and like foreign objects from entering the vent from the attic (Coulton, col. 4, ll. 58-62; col. 4, l. 66 – col. 5, l. 6).

Regarding claim 16 the Appellants argue that because Coulton's reinforcement strip 62 is laterally exposed it cannot have an interior surface (Reply Br. 6). The Appellants' Specification does not limit the meaning of "interior" to the area within the slot between the vent panels. Instead, the distinction made in the Specification is between an exterior surface (50) and an interior surface (52) (Spec. 8: 13). Hence, the underside of the Appellants' top panel outside the vent panels is part of the top panel's interior surface. Therefore, attachment of Coulton's filter material to the underside of Morris's top panel outside the vent panels would be attachment to the interior surface of the top panel as required by the Appellants' claim 16.

For the above reasons we are not convinced of reversible error in the Examiner's rejection.

DECISION

The rejection of claims 1-37 under 35 U.S.C. § 103 over Morris in view of Coulton is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED

Appeal 2007-2636
Application 10/826,651

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